IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2065 OF 2007

Sherbano Yakub Beig & Ors..... .....
Petitioners
V/s
Naseema Yakub Beig & Ors..... .....
Respondents.

Mr.Rajiv Patil , Adv. for the petitioners.

Mr.H.A.Solkar, Adv. For respondent No.11.

CORAM: A.P. DESHPANDE, J.
24.4.2007

PC:
Rule.

Rule made returnable forthwith. Taken up for final hearing by consent of parties.

The present petitioners are original applicants who moved an application for obtaining succession certificate. In the said proceedings original defendant No.1 was being represented by a natural guardian, his mother. During the pendency of the proceedings he attained majority and thereafter an application came to be moved before the trial Court to permit him to file written statement. The trial Court by a cryptic order has permitted the original defendant No.11 to file written statement by proceeding on the premises that in every case when a minor attains majority he has a right to file written statement. There is no specific provision to deal with this situation in Civil Procedure Code.

2. An identical issue had fallen for consideration before the learned Single Judge of Rajasthan High Court in the case of ***Malkiyat Singh & Anr.*** V/s ***Om Prakash & Ors.***, AIR 1995 Raj. 38. Learned Single Judge has held that there is no specific provision to deal with said situation and hence the application of

this nature seeking filing of fresh written statement need to be adjudicated at the touchstone of the principles laid down in the said judgment. If the case of the minor was not properly contested by the natural guardian then obviously the minor would be entitled to file written statement. The trial Court is thus obliged to apply its mind as to whether is it necessary to permit a minor who attains majority to file written statement or otherwise. An order either permitting or refusing the permission to file written statement cannot be a mechanical act. Perusal of the impugned order clearly reveals that the trial Court has proceeded on the assumption that there is vested right in the minor on attaining majority to file fresh written statement. That does not appear to be the legal position. In each case on consideration of relevant factors an appropriate decision need to be taken by the trial Court. As the trial Court has not at all applied its mind to the facts of the present case as to whether is there need to permit the minor i.e. defendant No.11 to file written statement or otherwise an interference with the order passed by the trial Court is called for. The succession proceedings were filed in the year 2001 and part of evidence of the applicant is over and at this stage application for permission to file written statement was filed. As I am of the view that afresh decision by the trial Court on the application moved by original defendant No.11 would be in furtherance of cause of justice, I interfere with the said order and pass the following Order:

O R D E R

The impugned order passed by the learned Civil Judge, Senior Division, Panvel dated 6.3.2007 is quashed and set aside. The matter is remitted back to the trial Court to decide the same in accordance with law and after taking into consideration the judgments which are relevant to the point for consideration. The trial Court shall decide the application of defendant No.11 seeking permission to file fresh written statement as expeditiously as possible. Rule made absolute in above terms.

24.4.07.